

COLBY D. BECK, ESQ.
Nevada Bar No. 6899
BOYACK BECK & TAYLOR
401 N. Buffalo Drive, Suite 202
Las Vegas, NV 89145
Ph: (702) 562-3415
Fx: (702) 562-3570
colby@edblaw.net
Attorneys for Third-Party Defendant,
BATES METAL PRODUCTS, INC.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ESPERANZA HOPE PHAM,

Plaintiff,

VS.

WAL-MART STORES, INC. dba SAM'S CLUB STORE #6382; SAM'S WEST INC.; NIC HESTAND; NATIONAL BEDDING COMPANY, LLC; SERTA INC; FOX MARKETING CORPORATION aka FOX MARKETING CORPORATION aka FOXMARK; DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive,

Defendants.

FOX MARKETING CORPORATION,

Third-Party Plaintiff,

VS.

BATES METAL PRODUCTS, INC.; ROE
individuals 11-20; and ZOE
CORPORATIONS AND ORGANIZATIONS
11-20, inclusive,

Third-Party Defendants.

NATIONAL BEDDING COMPANY LLC
and SERTA INC.,

Cross-Claimants,

VS.

CASE NO. 2:11-cv-01148-KJD-GWF

**ORDER GRANTING BATES METAL
PRODUCTS' MOTION FOR
DETERMINATION OF GOOD FAITH
SETTLEMENT AND DISMISSAL OF THIRD
PARTY COMPLAINT**

1 FOX MARKETING CORPORATION;
2 MOES 1-100 inclusive,

3 Cross-Defendants.

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5 THIS MATTER, having come before the court for hearing on an Order Shortening Time, on
6 November 28, 2012, on Third Party Defendants Bates Metal Products, Inc.'s (hereinafter referred to as
7 "Bates") [129] Motion for Good Faith Settlement Determination and Order Dismissing the Third Party
8 Complaint of Third Party Plaintiff Fox Marketing Corporation, the Honorable Kent J. Dawson
9 presiding, Third Party Defendant Bates represented by Colby D. Beck, Esq. of Boyack Beck & Taylor,
10 the Plaintiff represented by Douglas M. Chen, Esq. Of Fennemore Craig, P.C., Defendants San's West,
11 Inc., Nic Estand, National Bedding Company LLC, and Serta, Inc., represented by Brad R. Kohler II,
12 Esq., of Tharpe & Howell, LLP, and Defendant Fox Marketing Corporation represented by Kenneth E.
13 Goates, Esq. of the Law Offices of Kenneth E. Goates, the court, having reviewed the Motion and all
14 relevant pleadings and papers on file, received no opposition, considered the representations of counsel,
15 and all issues being fully disclosed by counsel, being fully advised in the premises, and good cause
16 appearing therefor,

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18 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Bates' Twenty Five Thousand
19 Dollar (\$25,000.00) contribution to the settlement amount of Two Hundred Seventy Five Thousand
20 Dollars (\$275,000.00) with Plaintiff is fair, reasonable, and made in Good Faith pursuant to NRS
21 17.245;

22 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Bates' settlement
23 expressly includes and discharges the past, present, and future claims, liabilities, and causes of action
24 asserted by Fox Marketing Corporation and/or Plaintiff against Bates arising from the facts and
25 allegations of Plaintiff's Complaint including all claims for contribution and equitable and/or implied
26 indemnity;

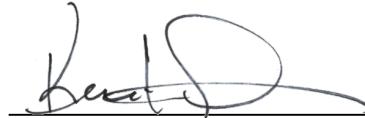
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1 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the Court has
2 reviewed and considered all the factors set forth in *The Doctors Co. v. Vincent*, 98 P.3d 681, 120 Nev.
3 644 (Nev. 2004) and *MGM Grand Hotel Fire Litigation*, 570 F.Supp. 913, 927 (D. Nev. 1983) and
4 finds that the amount of the settlement of Bates is reasonable and in good faith consistent with those
5 case and is in line with "the relative liability permutations of the particular contribution or indemnity
6 action known to it, including the strengths and weaknesses of the contribution and indemnity claims."
7 *The Doctors Co.*, 98 P.3d at 687. The Court specifically notes that liability of Bates in this matter is
8 tenuous, at best and that settlement amount is reasonable in light of the strength of defenses available;

9 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Third Party
10 Plaintiff Fox Marketing Corporation's Third Party Complaint is hereby dismissed with prejudice in its
11 entirety;

12 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Bates' instant
13 Motions for Determination fo Good Faith Settlement and to Dismiss Third Party Complaint With
14 Prejudice are GRANTED.

15 **IT IS SO ORDERED.**



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UNITED STATES DISTRICT COURT JUDGE

Dated: December 20, 2012

Respectfully Submitted By:

BOYACK BECK & TAYLOR



COLBY D. BECK, ESQ.
Nevada Bar No. 6899
401 N. Buffalo Drive, Suite 202
Las Vegas, NV 89145
Attorneys for Third-Party Defendant,
BATES METAL PRODUCTS, INC.